

**SEDGWICK COUNTY  
BOARD OF ZONING APPEALS  
MINUTES  
November 1, 2005**

The Sedgwick County Board of Zoning Appeals meeting was held at 3:30 p.m. on Tuesday, November 01, 2005, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N Main, Wichita, Kansas.

The following members were in attendance:

GRANT TIDEMANN, DENNIS GRUENBACHER and KATHLEEN GIDEON.

The following members were absent:

JANA MULLEN and TOM LINDSAY.

The following Planning Department staff members were in attendance: DALE MILLER, Secretary, and YOLANDA ANDERSON, Recording Secretary.

Other members present:

RACHEL PRINER, GLEN WILKSIE and AARON BLASE.

**MILLER** Calls meeting to order.

**TIDEMANN** First order of business is approval of the 2006 calendars

**Motion carried 3-0**

**TIDEMANN** requested that the minutes of July 5, 2005 be approved.

**Motion Carried 3-0**

**TIDEMANN** Agenda Item 3 COBZA2005-00066 Appeal of Administrative interpretation pertaining to the definition of a "group home, limited" on property zoned RR Rural Residential, generally located on the Southeast corner of 215<sup>th</sup> Street West and 24<sup>th</sup> Street South.

**MILLER** Planning staff person presents the following appeal memorandum;

The November 1, 2005 meeting of the Sedgwick County Board of Zoning Appeals, the Board will be asked to hear an appeal of the Zoning Administrator's interpretation pertaining to the definition of a group home, limited on property zoned "RR" Rural Residential made on September 2, 2005, by Glen Wiltse, Sedgwick County Zoning Administrator. The appeal has been filed by Curtis Kidwell, who requested a written interpretation of the Unified Zoning Code (UZC) definition of a group home, limited, and how it applies to a facility located at 21515 West 24<sup>th</sup> Street South in "RR" Rural Residential zoning. This property functions as a "recovery community" for persons recovering from substance abuse and dependence.

In his appeal, Mr. Kidwell contends that the definition of group home, limited, does not include the function described at 21515 West 24<sup>th</sup> Street South. Specifically, as group homes are defined as housing persons with a disability, Mr. Kidwell contends that recovering from substance abuse and dependence does not constitute a disability.

Mr. Wiltse interpreted that the function described at 21515 West 24<sup>th</sup> Street South does constitute a group home, limited. Mr. Wiltse interprets the definition of "disability" to include "recovering from substance abuse and dependence."

The authority of the Board to hear an appeal of the Zoning Administrator's interpretation is set forth in Section V-H.6. of the UZC which states:

Appeals of the Zoning Administrator's written interpretation may be taken to the Board of Zoning Appeals by filing an appeal with the Board of Zoning Appeals' Secretary within the time limit specified by the rules of the appropriate Board of Zoning Appeals. The Board of Zoning Appeals shall grant to the Zoning Administrator's interpretation a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Board of Zoning Appeals may reverse or affirm wholly or partly or may modify the interpretation of the Zoning Administrator. If the Board of Zoning Appeals determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the Zoning Administrator with directions to obtain such evidence and to reconsider the decision in light of such evidence.

In determining the appeal, the Board must determine if Mr. Wiltse's interpretation of the UZC was correct. Unlike variances that come before the Board, neither state law nor the UZC set forth criteria or factors that the Board can use to evaluate whether the Zoning Administrator's decision was correct. Further, the factors set forth in determining if a variance is appropriate generally are not applicable in determining if a decision of the Zoning Administrator is correct; however, the following UZC references provide the Board guidance pertaining to this particular appeal:

- ▶ Section II-B.5.h. – Group Home means a residential facility licensed by the state Department of Social and Rehabilitation Services, the Behavioral Service Regulatory Board or the State Board of Healing Arts that is occupied or intended to be occupied by persons with a “disability,” as that term is defined in K.S.A. 12-736 as amended, and staff residents, none of whom need be related by blood or marriage.
- ▶ Section II-B.5.k. – Group Home, Limited means a group home that is occupied by not more than ten persons, including a maximum of eight persons with a disability and a maximum of two staff residents, none of whom need be related by blood or marriage.
- ▶ Under the UZC, a “group home, limited” is a use permitted “by right” on property zoned RR Rural Residential.
- ▶ K.S.A. 12-736 defines “disability” as follows:
  - (3) “Disability” means, with respect to a person:
    - (A) A physical or mental impairment that substantially limits one or more of such person's major life activities;
    - (B) A record of having such an impairment; or
    - (C) Being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the controlled substance act (21 U.S.C. 802);

This memo summarizes the issues pertaining to the appeal and outlines the standards of review for appeals cases. Attached to this memo are the appeal form and supporting documentation submitted by Mr. Kidwell. Also attached to this memo is the official record of the Zoning Administrator upon which the interpretation is based.

In rendering its decision, it is important for the Board to issue an order that summarizes the evidence and outlines the basis for its decision. Based on the presumption of correctness of the Zoning Administrator's decision, a motion to affirm the interpretation of the Zoning Administrator will be provided to the Board at the hearing. Should the appellant meet the burden of persuasion in showing that the interpretation of the Zoning Administrator was in error, the Board should make a motion in a similar form based on the appropriate findings of fact that either partially affirms, reverses wholly or partially, or modifies the interpretation of the Zoning Administrator.

**TIDEMANN** We will have the appellant to step forward to the microphone please give your name and address for the records and anyone else who speaks we ask for the same information.

**Curtis Kidwell**, I live at 21101 W 23<sup>rd</sup> Street South, Goddard, KS, 67052. Has everyone had a chance to read through the information from both Aaron and I? Can I take a moment to finish reading information from Aaron?

**KIDWELL** Passes out a booklet from health and human services and use by Kings Drug and Alcohol treatment for their patients. Titled “Know your Rights are you Under Recovery from Drug and Alcohol Problems?” This brochure is used by Kings Treatment Center to give to their participants as they enter the drug treatment program. On Page 4, it says who is protected. The non-discrimination laws discussed in this brochure protect individuals with a disability under these federal laws. An individual who has a disability is someone who has a current physical or mental impairment that substantially limits one or more of that persons life activities. Such as, caring for one self, working or etcetera and has a record of substantial limiting impairment or is regarded as having such an impairment. A person that has a disability is decided on an individualized case-by case basis. There is no disability granted by the Supreme Court or any lower courts. You have my arguments in front of you and I am not an attorney. I am a health care worker and as such I have an important piece of information that I should have put into my arguments. Mr. Blasé put it into his arguments. Hamilton verse Southwestern Bell and several other lower courts have defined major life activities as functions as caring for oneself performing manual task, walking, seeing, hearing, speaking, breathing, learning and working.

Now as far as King's treatment center is concerned, what constitutes a disability is my biggest argument. Based upon Hamilton verses Southwestern bell telephone we can say that if someone was in a wheel chair and could not walk that it would be

a disability or if I had tuberculosis and could not breathe that it would be a disability or if I had cerebral palsy and confined to a wheelchair and could not speak or learn it would be a disability. As far as King's treatment center is concerned Mr. Bachler has stated that he picks the cream of the crop that he is not set-up to take people with disabilities such as wheelchair confined. His group home is not equipped to assist people with disabilities. Mr. Bachler does not think the residents in his group home are disabled. The group home currently houses boys. Several of those boys do not identify as substantial life limiting condition. They go to school, they learn, they walk, they talk, they wrestle on the team they have jobs and bring in money. This does not show a substantial limitation or a disability. Mr. Blaze in his argument talks about substantial limitation of major life activities. He quotes, "this is a narrow view not likely shared by Kyle Mainer born a congenital amputee his arms ending at his elbows, his legs at his knees; he was a contender for the Georgia State High School wrestling championship is now the author of the book of "No Excuses" the true story of an amputee that became a wrestling champion and in his life. Carl Mainer did not see himself as disabled. There have been numerous times when I go in to take a history and physical from the parent and have asked what is wrong with the child? They do not tell me that the child has C.P. or Spinal problems then I have to ask why are they in a wheelchair. If that parent does not see them as having a disability because they can still care for themselves and go to school and work and function in society. If these examples do not see themselves as disabled, why should we see the 16-23 year old women who are walking, talking, going to school, working and driving a vehicle as disabled? They do not have a substantial life limiting condition. I quoted a few court cases as to what constitutes a disability. The only case that came straight from the U.S. Supreme Court is Sutton versus United Airlines. Sutton vs. United Airlines states that if a person is taking measures to correct for or mitigate a physical or mental impairment the effects of those measures both positive or negative must be taken into account whether that person is substantially limited in a major life activity and thus disabled. In the case of King's treatment Center versus the US Supreme court the very fact that they are in rehabbed and trying to reconcile the issue that Mr. Blasé and several across the country considers them no longer disabled because they are taking corrective measures to no longer be disabled. Mr. Blasé went through the trouble of looking up a lot of my references. Aaron and I thank you. I know that it was a lot of work on your part. Birch versus Coca-Cola, Bailey versus Georgia Pacific Regional Economic Community Action Program, Goldsmith versus Jackson, those cases merely refuses to recognize alcoholism as a disability under the ADA. That is what I am saying that people in alcohol rehab with the history of alcoholism and people with the history of drug addiction are not covered. Testing each and every person would constitute probably a violation of the FHA act. I do not know if he is right or wrong. From a cost standpoint, it is prohibitive. It would not make sense to go through to test them to see if they truly meet the criteria for a disability. However, they are sitting with those patients making them write an essay and interviewing them. Again, these are all the things that a person with a major life disability probably would not be able to do. At the same time that he is interviewing them, he could be testing to see if they truly do meet the standards of disability. Working in the healthcare industry, we work under three primary rulings by our government for what is disabled. That does not benefit anyone of us. The Social Security Administration has their own set of rules the medical community has to say that person is disabled for whatever reason so they can get Social Security Benefits. The other two pieces of legislation are the American with disability Act and the Fair Housing Administration Act. Those two legislations use exactly same wording they mirror each other exactly. They basically say, in order to be disabled, a physical or mental impairment that substantially limits one or more of such person major life activities. Based on those two definitions from the Fair Housing Administration Act and from the Americans with Disabilities Act, I have a hard time seeing how these people met the criteria for disabled.

**TIDEMANN** Mr. Kidwell excuse me, we have a time limit on speaking how much longer do you need?

**KIDWELL** How much longer can I have?

**MILLER** It is up to the Board. You can establish whatever you want but it is normally 3 to 5 minutes.

**KIDWELL** I am sorry, I just wanted to cover all my facts and answered your questions as well. The Second point of my argument is that if you affirm Mr. Wiltse's recommendation. I want to thank Mr. Wiltse, he worked with us and he put forth a good-faith effort to make the best decision that he could and all the neighbors thank him for all the work he has done. Nevertheless having worked with children in drug and alcohol and suicide precautions and the physical and mental ailments, the most current arguments made for addiction show that it is a life long chronic problem. The DSM 4 is written in 1998 and not due for another update until the end of 2006 of next year. Really, is not the latest information to make the decision about what substitutes current use. The latest definition shows that the actual brain chemistry of one that is addicted, not abused those are two different things, has been chemically altered so that is a chronic condition. You can see my definitions of what chronic means. The Kansas State, the County and the Federal Government does not make leniency towards anyone that has a current or chronic use of drugs or an addiction to drugs or alcohol. Those people cannot be in a group home limited, under a group home type setting as laws are written today. They would need to be in a commercial rehab facility in order to get the rehab they need. This is basically the way King's Treatment Center's Limited Liability Company is running their business. They have people that are 30 days out. They are in business to make money. They are a commercial operation. It is not a group home where two people live there all the time. They have a staff. Are there any questions before I sit down? Thank you for listening to my arguments.

**PIRNER** Do you have any articles or other documentation that would be contrary to the DSM that has been cited by the County?

**KIDWELL** No, I could pull the source that I quoted. They are from 2003. The DSM-4 TR had a text revision in 1998 and the next issue will not be out until 2006. The DSM-4 TR does not take into account the latest medical model of addiction. Whether or not the DSM 5 will take into consideration the latest research, I do not know.

**PIRNER** You do not have an article with you today? Do you consider yourself an expert in anyway on addiction or substance abuse issues?

**KIDWELL** No I am not an expert. I have working experience but I am not a PH'D, MD or DO. I am a RT. There are probably some RNs' in the world that are considered experts in the addiction field but I am not one of them.

**PIRNER** Do you think drug and alcohol patients that are recovering from substance abuse issues, are they more likely to stay clean and sober in a group living setting as opposed to living on their own?

**KIDWELL** From my experience, it depends upon the home. Some do well and other return fast to their addiction. Some thrive and do well and some do not. My heart is torn on this issue. Working with these types of children, I feel we need facilities like King's treatment center. However on the other side, it is safety issues, zoning accordance, the way the center is being ran as a for profit center, I have issues with it. This is a commercial enterprise and it should be in a commercial zoning. However from a capitalistic point of view, King's Treatment Center has found a loop-hole in the federal statutes in order to slide in and make the people in our community uneasy disrupting our day to day lives based on the federal regulations that do not truly define the treatment as a disability. Until the Federal government can say that every single person with a drug or alcohol addiction is disabled then I wonder about it.

**PIRNER** You said when you were talking about being torn that you believe communities need homes like Sadies Haven, why is that? Is it because they had some success?

**KIDWELL** I think it is morally and ethically wrong of us to turn these people back out into the public. They need a place and rehab to get the help needed. We do not want to live in a society were they are killing off all their disabled people. We do not want to live in a society like that, we would like to help them. We should do it to the letter of the law in the best possible way that we can. That sad part is they can go into any district and put two or three of these houses next to our families. The community does not have a lot of options regarding it because they are protected by ADA and FHAA that has legal precedence on both sides.

**TIDEMAN** Any questions? Anyone else here to speak?

**Craig Bay**, I live at 21343 W 24<sup>th</sup> Street South, Goddard KS 67052, my property abuts the south and the east of the property of the zoning in question. You just heard from our neighborhood wannabe lawyer, Thank you Curtis you did a good job. All I want to cover is from our neighborhood association's prospective. What I am looking is to show how this came about to help you understand what we have gone through and where we think we are today and to show the loop holes in our zoning. I received a call and was told that someone purchased this house and is trying to turn it into a transitional home. We called Mr. Bechler and he contacted the Sedgwick County office to inquire about the group home limited verses residential. ADA came into play and the ruling came back that yes, you can use this as a group home limited. After communications with Sedgwick County Code Enforcement, we discovered that all homes have this group home residential status. This issue is now explicable and with this ruling that Sedgwick County developed along with the federal law any home has the capability to be used as a group home limited. Where we have a clarification for zoning if that clarification comes back that they do not have to make a change but you can use this for your intended use, there is not any notification given. So, had we not got together as a community and engaged the people that wanted to create this home, there would have been no communication and we would not be here today. There is a communication gap in notification. I would like to know what avenues do we have for that? The other issue is ADA. We do not have a paid lawyer. We will bring this as concerned citizens. We feel as if the system has let us down. What we find interesting is that this case is the first time it has came up for rural Sedgwick County. It has come up in the City but not in the County. By setting this precedent, whether it is legal or not, or whether federal law supports it, I think we set a key issue. What does group home limited include? It can be anywhere, Sedgwick County, City, it does not matter any activity group home can move into a residential setting and as a father of four younger children, 7 years and younger, that concerns me. I have this discussion with Mr. Bechler. As far as I am concerned they can run the program great for 3 months to 2 years. These individuals will be coming in trying to recover from drug and alcohol abuse and statistically have a higher recidivism rate where they can potentially return to their previous ways. It just takes one incident where one of my children were to get hurt. That is the background and emotions and thoughts that are not case laws but I want it to be weighed.

**Doug VanAmber** He desires this commission to consider the same views as the Goddard District, he says this case was brought in underhanded.

**TIDEMANN** Dale, can you speak on this issue?

**MILLER** This is not a zoning case but an appeal of interpretation.

**TIDEMANN** Is there anyone one else here to speak? Glen or Aaron.

**AARON BLASÉ**, Assistant County Counselor representing Glen Wiltse, the Sedgwick County Zoning Administrator. I appreciate your remarks Mr. Kidwell, Mr. Bay and Mr. Van Amber. I will say initially that while it is not an easy decision to make, it is made much simpler by the volumes of case laws that exist out there that has address this exact issues. There are a lot of cases that I have cited in my brief. On page 9, paragraph 10, this is a brief that I passed out prior to the meeting, where the courts have found that the Fair Housing Amendments Act apply to persons who are addicted to legal or drugs or alcohol but who are not currently using such substances. As long as they are not currently using the substance they are addicted to, these oxford house cases are group homes. You have a lot of cases where the courts have analyze the issues on whether such persons satisfied the definition of the FHAA. One of the case, Tobonitas, that is 180F.2nd 262, there no dispute in this case that the John Doe plaintiffs of non-abusing recovering alcoholics and drug addicts are members of a protected class under the FHAA and ADA. There are several cases, I have cited a couple, where the issue of those persons who are addicted to legal drugs and alcohol but are not currently using falls under the definitions of disable persons under the FHAA that the parties going up to the supreme court in the City of Edmonds case, simply stipulated to that issue whether these persons had disabilities. In looking at this issue initially, the Code enforcement looked at the definition of group home, the written interpretation from Glen Wiltse of September 2, 2005 runs through the analysis. The definition of the group home basically has two components, the first one is that the group home has to be licenses by SRS; the second is that it has to be occupied or intended to be occupied by a person with the disability as defined in KSA 12-736. That definition mirrors the definition of handicap in the FHAA and the definition of disability of the ADA. That says specially, “ such term does not include current illegal use of or addiction to a control substance”. A commenter, Professor Michael Davis and Karen Grouse, wrote a lot of the articles that I cited in paragraph 12 of my brief. It is call protective group homes for the non-handicap zoning in the post Edmonds era. Where they say, group homes for recovering drug and alcohol addicts are clearly protected. The FHAA definition explicitly excludes a persons with current illegal use of or addiction to a control substance by negative inference persons recovering from illegal use of or addiction to substances are covered under the FHAA provided they are not current users. He cites to the numerous Oxford house cases that I just eluded to.

I understand that the neighbors are concerned about possibilities of bad things happening when they moved into the neighborhood. However, that is not the issued that we looked at. This is a concern to many people, that is why there is so much case law out there. The concerns of the neighborhood and for that matter, the concerns of the Planning Commissioners of the City of Goddard are of little weight when you look at does this use or proposed use fit this definition? Therefore, is it a permitted use? I understand the concerns and empathize with them but this is an issue where we look at the law and the situation and apply the law to the situation. The FHAA, in this case, is more persuasive the cases that have been analyzed on the basis of the FHAA because it involves housing. It is more persuasive than employment discrimination under the ADA. This is clearly an individualized inquiry when someone is claiming to be discriminated against because of their disability. The issue is, are they disabled? Several cases have said, they have to show that health of the major life functions. The issue under the FHAA is the same on whether the individual is handicap; it is fact specific and in the case of a recovery community a group home such as King’s Treatment Center, the two group homes that they have, it would be a violation of HIPPA or federal law to require King’s Treatment Center to provide medical records of residents, or at the time of this interpretation, its proposed residents. It was not determined at that point. The case I cited on page 4, in paragraph 6, Start Inc. Verses Baltimore County, Maryland 295F2nd. It quotes on the next page 5, from the case of MX Group Inc Verses City of Covenington, it quotes with approval an adoptive fact finding that said, to dismissed claims that an individualized inquiry of a client is needed with defined reason considering the allege misconduct is the reason why Start has no individualize patients to present. The entire quote of passage addresses this issue and it is noted that recovering alcoholics who need the supportive environment of a halfway house would qualify under the second aspect of the definition of disability because they have a record of having an impairment. The recap case is cited in the next paragraph 7, but I want to focus on the case in paragraph 9, Southern Management 955F2nd 914, in that case the defendant refused to rent apartments to clients of Cross Roads, a drug and alcohol program for adolescences and adults who had just entered in the next phase in cross roads program. The issue in that case hinge on whether the recovering alcoholics and drug abusers in that program were handicap under the FHAA. Including whether such persons were current or not current users or addicted to controlled substances. The court talked about the legislative history that quoted in the written interpretation on page four said, that in the context of the legislative history of the Fair Housing Amendments Act, that the housing arena is “qualitatively different from those in which the issue had been addressed previously” the former recovered or recovering addict was to be given equal access to housing. In other words, someone who as a medical matter will always have a craving for narcotics, for the first time congress had specifically refered to mere participation in a drug rehabilitation program coupled with non-use as an adequate basis for inclusion in the definition of handicap in the rehabilitation act. The explicit focus on successful rehabilitation in supervised programs assures us that congress accepts the concept of a rehabilitated addict. The point, I was attempting to make in my brief concerning Kyle Mainard, was not that Kyle Mainard considered himself to be handicap but that merely identifying that person are able to appear about they daily lives can not be pointed as an indication that they are not disabled. You cannot look at them and say he is working and determine he is not disabled. I think it is clear, based on the case law, if the Board of Zoning Appeals were to rule against the Zoning Administrator on this issue it will, in fact, be a ruling against all the case law that

we have that makes it very clear that persons who are recovering from illegal drugs and alcohol addiction, that are not currently using it, they do satisfy this definition. The final issue is what is current addiction? While it is clear that these persons satisfy the definition the key question that Mr. Wiltse had to look at was, at what point are they to be considered as not current users? Before that, the expert advice of Ms Maryann Fountain, who is Sedgwick County ComCare Clinical Supervisor, she is present here today. She was consulted on this particular issue as well as a document received by King's Treatment Center that listed some of the points why their criteria required a 30-day period of non-use as a sufficient period of time to concluded that persons are not current users.

This DSM –14 manual that Kidwell referred to, it is her opinion that it is well perceived in the substance medical community that this 30-day period is a sufficient time or the technical term is early full remission. I asked Ms. Fountain to be here. I would ask that she could speak on this issue at this time.

**Marianne Fountain**, I am a clinical manager at Comcare Addiction Treatment Services, our address is 940 N Waco, Wichita. I am a registered nurse and have been one since 1981. Also I am a registered drug and alcohol and other drug abuse counselor through the behavior science regulatory board. I am certified through the Kansas Association of addiction Counselors as well. The information I am asked to review, is whether 30 days constituted current addiction or not. The manual that we use and is widely used throughout the psychiatric medical community and substance abuse community is the DSM 14-R. The copyright of my book is 2000. I am not certain if that is the last date but that is the copyright of my book. What it describes as early full remission as being the criteria for either substance dependence or substance abuse has not been met within the last 30 days or one-month period. Being 30 days falls within that one-month period or is fairly equal to it. That is my thought on it as well. I also went on my own experience. I had the opportunity to teach at Bulter County Community College a pharmacology class so I understand the models that Mr. Kidwell was referring to about addiction being a brain disorder. What that has to do with my background is the resulting affects of the drugs. Yes, it does take a while for normal brain functions, meaning neurotransmitters and chemical in the brain to return back to the normal state but that does not mean currently using. I went and looked up what current meant and it meant at present. So that I can make sure that I was on track with what the definition is. It means basically at present. I also brought some detoxification or withdrawal criteria. It talked about withdrawal symptoms and whether people were under the influence and then when people are not under the influence, they go through the detoxification or withdrawal process. That is where I came to my conclusion on currently using. I went to the literature that I knew and the experience that I have had and the research that is out there on substance and addiction. Are there any questions?

**GRUENBACHER**

Is there any one here from Kings?

**Heath Bechler**, I am the co-founder and co-owner president and C.E.O. of King's Treatment Center. I cannot say it any better than Mr. Blasé. This entire scenario has been interesting and informative. The neighborhood has been wonderful to work with. They have been very objective in the matter and have appropriately made their feeling known and their concerns. As far as my integrity speaks, I have done as much as we can to help address those things. One of the reasons I selected this specific home was because of the location, because it is apart from the rest of the base community. We do have a very good relationship with the City of Goddard and the school district. In taking a look at risk and protective factor research when it comes to working with adolescence with substance abuse disorders, the inherent nature of Goddard is a tight knit community, a supportive environment having a lot of different opportunities for extra-curricular activity throughout the school. A lot of school involvement and attachment, this made it ideal in furthering and catalyzing their recovery from these issues. Therefore, it is difficult for us to come into this. Even if we went and canvased every neighborhood and asked "would you allow us to be here?" Unfortunately, the stigma that is attached to recovering alcoholics and addicts is categorically no, we do not want these people or we do not want you or them in our community. The fact remains that there is progress, there is treatment; there is recovery from this. That is whom we are targeting with these different homes. A lot has been said of the 30-day minimum from illicit use of alcohol or drugs, but we do more than that, we perform an interview process, we do have an application and an essay that must be written. We also in that application have two different plans, a community appreciation plan and an educational or occupational development plan. Also, it encourages them to do better than what people have done with them before. It allows for us to give back to the community in a matter that is helpful to them as well. I have clients in a residence have done a number of things educationally. The grades that they are receiving are better grades from the Goddard School system than some in the Goddard alternative program, some of them are actually mainstreamed into the actual high school. We have some graduating that never had the chance of doing so before. We also have others that are participating in extra curricula activities. Categorically, they are going about a regular normal life it is because they have progressed so far in their disability. They probably squander a lot of opportunities. They may not been taught the skills necessary to be able to go out and get a job to make their own money or to be involved in extra curricula activities because of their drug and alcohol abuse. This is a wonderful opportunity for them to get this in a very safe secure environment. As you can see, the neighbors are a part of this process as well because they will hold accountable those clients as well and not only the staff of KTC. It is not going to be a neighborhood that is going to turn a blind eye to miscreants running around the neighborhood. We have developed a community advisory committee based upon this situation that not only involves the Goddard community but the Goddard Police Department, Goddard School Systems but also three members of the immediate neighborhood and one that is here today. Not only giving suggestions but also access to Sadie's Haven, and that is not something that we have done before. It has been wonderful having their participation in the program. Any questions are welcome at this time.

**GRUENBACHER** How long has King's Boys facility been operating?

**BECHLER** It is called the interdependent living program and we started that in January 17, 2004. It serves 7 boys sixteen and older.

**GRUENBACHER** Have there been any problems created out in the community?

**BECHLER** There was a boy that pocketed some firecrackers and when it was discovered we unsuccessfully discharged him.

**TIDEMANN** As far as the 30-days, do you have some type of testing program to make sure they make the minimum?

**BECHLER** A lot of our clients come from social services such as United Methodist Youthville, St. Francis Academy, Juvenile Justice Authority and most of them have protocol set up and urine testing. We will review all of the information provided by those sources to prove that they have been clean at least a minimum of 30-days and we will require documentation from those sources if necessary.

**TIDEMANN** You have on-going testing programs after that?

**BECHLER** Yes, we have to do that in-house.

**GRUENBACHER** How often do you test them?

**BECHLER** Test them randomly, we test them when they return from home passes which a reintegration plan.

**GRUENBACHER** How often, every 6 months?

**BECHLER** No, categorically at least once a month and some kids at least once a week.

**TIDEMANN** Any more questions?

**PIRNER** I am curious about the boy's camp that you run? What is the incidence of relapse with your residence there?

**BECHLER** Boy's Camp? King's Achieve Center and that is a completely different program. The independent living program, the group home, as far as recidivism over the course of the past year, we have had one that returned to active using while on pass during a home visit. He had a falling out with his father and decided to go off and drink and was successfully discharged from the program. Apart from that it is difficult to track who is doing what because a lot of our clients are transient in nature, not independently as they are in social services. They come to us primarily because their goal is independent living, so they may live at a number of locations. We just installed last September a Director of Research and Data Development, that will be tracking clients longer termed. It is difficult to get longer termed research after they successfully completed your program.

**PIRNER** Of the children that have participated in your program, you have had how many to relapse?

**BECHLER** We have served 40 clients within the last year and a half and I believe at least 80 percent of them are yet doing well.

**GRUENBACHER** Any other questions? Anyone else care to speak?

**KIDWELL** May I have a 2-minute rebuttal?

**TIDEMANN** Yes.

**KIDWELL** Your task here is to take information you have gathered and to either affirm Mr. Wiltse, or partially affirm or go back with modifications and recommendations. One of the things, I do want to say that has been encouraging for us and Mr. Bechler, if you decide as a council to basically affirm his recommendations, we as a community would like to explain our situation and possibly have you go back to the zoning with recommendations for some changes for the future if this kind of thing happens again which I am sure that it will. Mr. Bechler, since finding out the group home was the purpose for buying it, he has been very up front with us. We have several meetings with Mr. Bechler and he has made good faith efforts to start an advisory committee. Basically, it is community involvement in the home so that members of the neighborhood, a member of the clergy, a member of the police force are going to be actively involved in checking up on the home. My feelings are if you concede to affirm Mr. Wilksie's decision on this, I would like to recommend that you go back with recommendations that this is not a federal issue; it can be done at the city and county level for the facility to become group home limited. That community involvement is

mandated or recommended. I do want to thank Mr. Bechler and Mr. Blasé. This has been a learning process and there has been a lot of interaction and community meeting and I appreciate it and I appreciate your time.

**TIDEMANN** Thank you. Let the Board take a 10-minute break and come back to discuss it.

**TIDEMANN** I call an end to the recess and put the meeting back in order. Do we have a motion at this point?

**GRUENBACHER** Being a member of the BZA Appeals Board having considered the entire record regarding this matter having heard the evidence as present here today. I move that the Board make the following finding; 1.) that the board of zoning appeals has jurisdiction to hear this appeal pursuant to KSA12-759D and Section DH6 of the Wichita Sedgwick County Unified Zoning Code, herein called the Zoning Code. 2.) the Board makes the following findings that the Zoning Administrator pursuant to Section DH1 of the Code has the authority to interpret the code on December 2, 2005; B.) the Zoning Administrator correctly interpreted that the function described at 21515 W 24<sup>th</sup> South does constitute a group home limited. The Code Section 2B5H defines group home as a residential facility licensed by the State Department of Social and Rehabilitation Services, the behavioral services regulatory board or the state board of healing arts, that is occupied or intended to be occupied by persons with a disability as that term is defined by KSH 12736 as amended in staff residence none of whom needed to be related by blood or marriage. C.) the Zoning Administrator correctly interpreted the definition of disability to include recovering from substance abuse and dependence referring to KSA 12-736 definition of disability as follows; 3.) Disability means with respect of person A.) A physical or mental impairment that substantially limits one or more of such person's life activities; B.) A record of having such an impairment or C.) Being regarded as having such an impairment as such terms does not include current illegal use or addiction to a control substance as defined in section 102 the control substance Act 21 USC 802; D.) that the subject property is zoned R.R. Rural Residential which pursuant to section 3B2B2 of the code permits a group home limited by right; 4.) the Board finds that the interpretation of the code by the Zoning Administrator as set forth in the letter of September 2, 2005, was correct and supported by evidence presented at this hearing 5.) the board further finds that the appellant has not met his burden of proof to show that the interpretation was in error. Therefore based on this foregoing, I move that the interpretation of the Zoning Administrator adhere and be affirmed.

**GRUENBACHER** Is there a second?

**GIDEON** Seconded.

**GRUENBACHER** Motion passed 3-0

**GRUENBACHER** In regards to your question Mr. Kidwell, we had some discussion and would like to say, we as a board do not feel that it is in our jurisdiction. In visiting with Dale Miller, he has some views on it that he would like to share with you.

**MILLER** Part of the frustration is that you did not get notices as you expressed, the limitation that staff has is by state statute 12.7.36. The state has basically usurped the local government authority to regulate group homes that meet this definition and it specifically says that persons with a disability shall not be excluded from the benefits of single family residential by any municipal zoning ordinance, resolution or regulation. So as long as they meet this definition there is no way for local staff to provide notice or to give you any fore warning regarding a group home limited. The only way to change that would be to get the legislature to change this particular statute.

**GRUENBACHER** It is out of our hands.

**KIDWELL** What about recommendation for community action?

**TIDEMANN** That is not a part of this zoning. I do not think we can do it.

**GRUENBACHER** I think that the way the law reads in my understanding is we as a board, a community, Goddard or any body else is actually ham strung from the stand point that the state law requires that they have that right.

**KIDWELL** The City of Lawrence actually took that matter to Carla Stovall and the state statute held out in that case but Lawrence used their area of influence the way that the state statute read. They added some things to it. From that action with the City of Lawrence, I thought that there was a possibly that at least the city and county could add to the statutes, they just cannot take from the statutes.

**TIDEMANN** We are zoning appeals, not planning.

**KIDWELL** My thinking was that you could go back to the zoning commission with a recommendation or is that something I will need to take up on one of their agendas?



**MILLER** Certainly you can come to MAPC and they will grant you 5 minutes to bring this to their attention. What we are already doing is for those groups home that exceed the eight persons with disabilities, plus the two care takers. If you exceed that, then there is a way to send you notice. They do have to get a conditional use hearing and we do send notices on ones that have more people than eight.

**KIDWELL** It seems to me that is was something besides just a group home limited but I not clear on what that was.

**MILLER** I will be happy to call them and explore it further.

**GRUENBACHER** Any further matters to be brought before the board at this time? If not, I will ask for a motion to adjourn.

**GIDEON** I move that we adjourn.

**TIDEMANN** I seconded.

**Motion to adjourn carries 3-0 4:48pm**